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ABSTRACT

A study examined the record of President Ronald Reagan's appointees of the District of Columbia Court of Appeals as regards decisions on communication law. One hundred thirty-nine cases--obtained by examining the civil liberties, libel, obscenity, privacy, records, and telecommunications entries of the volume indexes of the Federal Reporter, second series, beginning with volume 667 (where Judge Robert Bork's opinions first appeared) through 854 (the most recent)--were coded and analyzed. Data revealed that: (1) parties invoking freedom of expression issues won 62 of the 139 cases during the 8 years after the appointment of Bork, Reagan's first appointee; (2) in 122 opportunities for Reagan judges to vote on expression issues they voted for expression 36.8% of the time, while the Democratic appointees favored expression 55.0% of the time; and (3) of the eight Reagan judges only two demonstrated a moderate image in expression cases. Findings support those of previous studies which suggested that appointees of Democratic presidents were comparatively more liberal than those chosen by Republican chief executives. (Four tables of data and 35 notes are included.) (MS)

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REAGAN JUDGES: COMMUNICATION LAW AT RISK?

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REAGAN JUDGES: COMMUNICATION LAW AT RISK?

During the past eight years there has been a gradual, but noticeable, shift toward more restrictions of freedom of expression in court cases across the country. That shift is largely due to Ronald Reagan and the appointments he has made to the federal judiciary. The conservative drift of the courts is likely to become more noticeable and have a greater impact on communication law in the years ahead as judges appointed by more moderate or liberal presidents retire from the bench and are replaced by appointees of George Bush.

Reagan appointed 360 federal judges across the country. While his three appointments to the Supreme Court have been the most visible, Reagan's selections of lower court judges, including nearly half of all full-time appeals court judges, are sure to have a lasting impact on the direction of judicial decisions into the 21st century.

In his examination of the federal judicial system, J. Woodford Howard Jr. noted that "selection of federal judges is a critical nexus between politics and national courts...Federal judgeships are among the richest prizes politicians may bestow."[1]

While Reagan is not the first president to consider ideology and judicial philosophy of his nominees, the Reagan administration represents, according to Sheldon Goldman, a University of Massachusettes law professor, "the most systematic, most coordinated effort at the use of the appointment power to maximize the president's agenda and to maximize the president's influence on the appointment process."[2]

Howard suggests that "the politics of recruitment affects the kinds of persons who become circuit judges and the decisions they

make. Skillful replacement of judicial turnover, whether labeled 'court packing' or 'balancing,' is a customary method of influencing the ideological hue of federal courts."[3]

Legal scholars and the news media often refer to the D.C. Circuit Court of Appeals as the second most important court in the nation. It monitors the activities of a number of federal regulatory agencies such as the Federal Communications Commission, the Environmental Protection Agency, the Federal Elections Commission, the Interstate Commerce Commission and the Food and Drug Administration. Its cases involve all cabinet level departments, including Defense, Justice and Treasury. "Reviewing agency behavior puts Courts of Appeals in the forefront of policy formation and implementation in the modern regulatory state. As a commissioner of the Federal Energy Regulatory Commission put the point recently, 'We live with the Courts of Appeals.'"[4] Because the decisions of the Courts of Appeals are final except when the Supreme Court grants review, the circuit courts are courts of last resort for the great mass of federal litigants and thus contribute heavily to case law.[5]

As D.C. Circuit Court Judge Patricia M. Wald said, "The staples of our diet are the legal sides of the most complicated scientific, economic, social, and even political issues of our day; issues that affect the quality of our nation's life -- the air we breathe; the water we drink; the price we pay for fuel, medicine, telephone calls, and political campaigns."[6]

PURPOSE

Reagan appointees to the U.S. Circuit Court of Appeals for the District of Columbia now number six of twelve postions on the bench. There is one vacant seat. The other five were named by Presidents

Johnson (one) and Carter (four).

The purpose of this paper is to examine the record of the Reagan appointees to the D.C. Court of Appeals as it applies to communication law. Reagan made eight appointments to the court, of which six remain: Robert H. Bork on Feb. 12, 1982; Antonin Scalia on Aug. 17, 1982; Kenneth Starr on Sept. 20, 1983; Lawrence H. Silberman on Oct. 28, 1985; James L. Buckley on Dec. 17, 1985; Stephen F. Williams on June 16, 1986; Douglas H. Ginsburg on Oct. 14, 1986, and David B. Sentelle on Sept. 11, 1987. Scalia left the D.C. Court to join the Supreme Court in September 1986, while Bork left the bench in February 1988 after his nomination to the Supreme Court failed to receive Senate approval. Bork's seat on the D.C. Appeals Court remained open at the end of the Reagan administration after the Senate Judiciary Committee refused to act on Reagan's nominee to the seat. President Bush will nominate someone to fill the position on the closely divided appeals court.

The Washington Post reported that Bork's resignation leaves the court conservatives "without their intellectual guiding force and may imperil their control of the influential circuit."[7] Quoting Bruce Fein, a conservative legal scholar with the Heritage Foundation, the Post reported "'Bork's resignation makes his successor very pivotal....It will be very critical to holding the line at least in a way that's somewhat favorable to the conservatives that the successor share the president's judicial philosophy.'"[8]

Court analysts suspect the hard right swing of the appellate court will loosen with the departure of Bork and Scalia since other Reagan appointees to the bench are not viewed as being as rigid. According to Fein, "Buckley, Williams, Sentelle -- they're not Bork,

Scalia or even (Douglas H.) Ginsburg when it comes to predictability of voting in a conservative philosophical sense."[9]

With the advent of a new presidential administration, the time is ripe to examine the impact of the Reagan administration on such an important court.

LITERATURE REVIEW

Social scientists have analyzed the U.S. Supreme Court by comparing how individual justices voted on related cases. The same process can be applied to the judges of the federal circuit courts, although few studies have done so. An underlying premise is that the political, philosophical and jurisprudential background of judges influences their voting, causing them to arrive at contrasting conclusions about a case based on the same set of facts.[10]

Hale's study comparing the Warren and Burger Courts was able to characterize the participation of the justices in free speech cases. Hale's statistical analysis of the aggregate voting of the two Courts on speech cases is consistent with the characterization of the Burger Court as moderate or middle-of-the-road and not right-wing or reactionary. Hale found that there was not much difference between the Warren and Burger Courts, or at least not enough to justify the characterization of one Court as prospeech and the other not.[11]

Huffman and Trauth used a qualitative study to examine the impact of judicial restraint on communication law as practiced by Bork during his tenure on the D.C. Circuit. They found that Bork's embracement of judicial restraint gave greater freedom to federal agencies like the FCC while proving to be a negative characteristic from the view of the institutional press. They also concluded that Bork held to his judicial philosophy without being swayed by

political ideology. And while the philosophy of judicial restraint may have many negative ramifications for freedom of expression, whether the opposite philosophy, judicial activism, provides greater security for freedom of expression is yet to be determined.[12]

Analyzing the voting behavior of federal courts of appeals, Goldman found "party affiliation is the background characteristic that has been shown to have the strongest direct link...to voting behavior. Studies of national politics and elite behavior make it reasonable to expect that party affiliation will be associated with voting behavior."[13] Goldman found that on the majority of issues, which included civil liberties, it was "clear that on the whole Democratic judges tended to be more liberal than Republican judges" sitting in all circuits for fiscal years 1965 through 1971.[14] He concluded that "to some extent the outcome of a case will be determined by who sits on the three-member appeals panel."[15]

In a separate study of judicial appointments to the appellate courts, Goldman found that appointees tended to be "political activists reflecting (to some extent) the values and outlook of the appointing adminstration. This undoubtedly has far-reaching consequences for judical decisional behavior and for the development of law in the United States."[16]

The impact of appointments to the federal bench has been recognized as being significant. Political scientists Charles A. Johnson and Bradley C. Canon suggest that the impact of federal district courts and courts of appeals has paralleled that of the Supreme Court "since these courts impose Supreme Court decisions to a greater or lesser degree on activities within their jurisdiction."[17] They note that in the last thirty to forty years, the

impact of the federal courts has been in the area of civil rights and civil liberties. "The courts have struck down local laws and policies that discriminate by race or sex, that constrain freedom of expression, and that appear to short-circuit due process."[18]

Johnson and Canon recognize that the actual impact of the federal courts varies considerably depending on circumstances. They found it difficult to assess the impact of court decisions regarding freedom of expression. "The crucial issue for evaluation political freedom is the degree to which unpopular opinions can be expressed. In general, Americans have a tradition of tolerance for unpopular viewpoints, but the tradition is punctuated with numerous exceptions, especially in time of crisis."[19] While Johnson and Canon note that "nearly all freedom of expression policy has been made by the Supreme Court,"[20] they fail to recognize the impact of the courts of appeals, particularly the D.C. Circuit, in developing and implementing freedom of expression policy.

Jerome R. Corsi suggests that while a "correct" judicial role may be easily defined, in fact "politics are not so easily excluded from the legal process."[21] Law and politics are too closely intertwined to be able to examine one without looking at the other. Consequently, when looking at fundamental freedoms like that of press or speech, the definitions of those freedoms are politically influenced.

Federal judges act on their personal views, including their views of what is proper for them as judges to do. "They interpret law and precedent in disputes that arise from our social, economic and political lives. Their decisions are not fixed in stone for all time, and the policy implications of their opinions are certain to be perceived, analyzed, applauded, and panned by those situated at all

points throughout the political spectrum."[22] Corsi concludes that "the truth we perceive is the pervasive presence of politics."[23]

METHODOLOGY

This study differs from similar studies in several respects. Huffman and Trauth examined one Reagan judge of the D.C. Circuit Court of Appeals, while this one studies all the Reagan appointees to that circuit as well as previously appointed judges who sat on the D.C. bench with the Reagan judges. Carp and Rowland analyzed the records of all federal district court judges over an extended period, which ended before the impact of the Reagan appointments could be read. This study comes at an appropriate time with the end of the Reagan administration and the end of his selection of judges. This study also differs from analyses conducted by Hale and others which look at the Supreme Court instead of the appellate court.

A comprehensive list of cases was obtained by examining the civil liberties, libel, obscenity, privacy, records and telecommunications entries of the volume indexes of the Federal Reporter, 2d Series beginning with volume 667 (where Bork's opinions first appeared) through 854 (the most current volume at the time of the study). The list includes speech as well as press cases, and unsigned per curiam decisions as well as signed decisions. En banc decisions also are included. This resulted in an N of 139 cases.

Each case was coded for the year it was filed by the Court, the communications medium (newspaper, magazine, radio, television, book, spoken word, newsletter or memo, other), and the major category of expression (First Amendment, libel, privacy, records, Freedom of Information Act, obscenity, copyright, telecommunications, other). Telecommunications issues were narrowly focused to expression issues

and did not involve licensing cases.

Hale's method was used in deciding whether the Court or judges supported or rejected freedom of expression.[24] If the decision as a whole supported the press organization or person invoking speech rights, it was considered a "pro" decision. If the specific exercise of free expression was restricted by the Court, either in part or entirely, it was considered an "anti" decision.

The participation of each of seventeen D.C. Circuit Court judges, including the eight Reagan judges, was coded for every case. Most of the time a judge participated in one of twelve ways. First, there were three types of opinions -- majority, concurring and dissenting. (Majority opinions announce the result for the parties to the case and, more importantly, the underlying rule and rationale. Concurring opinions support the result of the majority, but not the rule of law used to arrive at that result. And dissenting opinions reject the result, rule and rationale of the majority decision.) For each of the three types of opinions, there were four forms of participation: author supporting expression, author limiting expression, signer supporting expression, and signer limiting expression. There were four other forms of participation, making a total of sixteen: author of decision dissenting in part, signer of decision dissenting in part, disqualified and did not participate in case, and not on the Court at the time of the case.

Subsequently, statistical results were obtained for frequencies of variables and for cross-tabulations between pairs of variables. For some of the analysis, the judges' participation was collapsed from sixteen to three responses: support of free expression, rejection of free expression, or nonparticipation in case. Two-by-two

agreement tables were computed for pairs of judges to determine how often they agreed to either support or reject freedom of expression.

RESULTS AND DISCUSSION

Parties invoking freedom of expression issues won 62 of the 139 cases or a 44.6 percent success rate during the eight years after the appointment of Bork. The figure demonstrates a slightly conservative leaning from the entire D.C. Circuit, but not significant enough to call the circuit a conservative bench with regard to freedom of expression issues. Instead, the court could be viewed as a moderate group of judges. That tendency, at least in expression cases, could change as the Reagan judges take on more of a role and as Bush appointments are made.

The Reagan judges had 122 opportunities to vote on expression issues (Table 1). The total number of opportunities for all judges is three times the 139 coded cases or 417 since most appellate court panels consist of three judges. The figure is actually higher, 433, when considering en banc panels. The Democratic appointees during this same time period had 218 opportunities to vote on freedom of expression issues. The two groups together total 340 of the 433 opportunities. The difference is made up by the two Nixon appointees and various judges who were assigned to the circuit by designation over the eight years.

In their 122 opportunities, the Reagan judges voted for expression 36.8 percent of the time. The Democratic appointees favored expression 55.0 percent of the time. Certainly, the voting behavior of the Democratic judges does not project an overwhelming liberal image. Instead, it is a more moderate image when those judges deal with freedom of expression. However, the Republican voting

record indicates a definite and more conservative philosophy.

If the Republican results were to include the two judges appointed by Nixon (MacKinnon and Wilkey), then the conservative view would be even greater. Those two judges in 30 opportunites voted for freedom of expression only 26.7 percent of the time.

Judges who have been on the bench longer obviously have had more of an opportunity to participate in expression cases. With 139 cases over the eight years of this study, an average of 17 dealt with expression each year. During that same time, the Court on average decided approximately 466 cases per year overall. With twelve judges on the D.C. Circuit (at times the number of judges was eleven), we would expect a judge to have a one in four chance of being selected for a particular case. So each judge should deal with about four expression cases per year. In his four years on the circuit, Scalia participated in 22 cases or just over five cases per year. Bork, who was on the bench six years, participated in 31 cases or just over five per year. Starr has about the same average with 24 cases as does Silberman with 16 cases. Sentelle, the newest member of the court, dealt with four expression cases in his first year.

Of the eight Reagan judges only two, Sentelle and Buckley, demonstrated a moderate image in expression cases. Sentelle had a 50 percent and Buckley a 55.5 percent rating favoring expression. The remaining judges can be labled conservative. Williams was the most conservative, voting for expression only 12.5 percent of the time. Bork, Starr, Silberman, Douglas Ginsburg and Scalia all were in the 33 to 38 percent range.

Democratic judges, on the other hand, showed more moderate to liberal leanings for the same cases. Two judges recorded conservative

ratings, Mikva and Bazelon, and two were moderate, Robinson and Tamm. The rest, Edwards, Ruth Bader Ginsburg, Wald and Wright, could be classified as liberals based on their voting record in expression cases. The range among liberals went from Wright with a 70 percent agreement rate to Edwards with a 59 percent agreement rate. The judges sitting on the circuit by designation were as a group conservative, voting for expression parties 41.3 percent of the time.

If politics is so intertwined with the judicial process, then the impact on judicial policy by the president in making appointments to the bench would appear to be substantial. The results of this study support findings of Carp and Rowland in their study of federal district court judges. They discovered that appointees of Democratic presidents were comparatively more liberal than those chosen by Republican chief executives.

Though their study ended with the appointments of President Ford, Carp and Rowland suggest that their findings are applicable to Reagan. "The circumstances of his campaign, his election, and the early part of his presidency predict a substantial conservative influence over lower-court policy decisions."[25]

This study supports that conclusion and, in fact, suggests that similar results would be found for all of Reagan's appointees. Carp and Rowland conclude that not only have the "Reagan judges been selected with a keen eye toward their ideological bent" but the Supreme Court is rendering ambiguous decisions on many key issues confronting the judiciary. Such ambiguity gives lower court judges more freedom to "take their decision-making cues from their personal ideology."[26]

"Casting a vote for or against a right is one way to influence

civil liberties law. Another method is for a judge to take the time to write a separate opinion."[27] Opinion authorship included majority, concurring and dissenting opinions. Williams among the Republicans was the most prolific opinion writer, producing opinions in 62.5 percent of the expression cases in which he participated. (Table 2)

Among the Republicans, Starr (58.3), Silberman (56.3), Buckley (55.6) and Bork (51.6) were prolific enough to write in more than half the cases in which they each participated. Bork, who was on the court the longest, had 16 opinions and Starr 14. Only Sentelle, the newest member of the court, has not written an expression opinion.

Among the Democrats, Wald was the most prolific writer. She wrote 19 opinions, representing 51.3 percent of the expression cases in which she participated. Wright, with 14 opinions, representing 46.7 of his cases, and Mikva, also with 14 cases, but representing 40 percent of his cases, followed Wald.

Hale contends that "authorship of a majority opinion provides visibility that a [judge] may or may not welcome. Free speech cases receive more thorough news coverage and editorial discussion than other Court cases. Thus a judge who is concerned about a public image might be more willing to author a prospeech than an antispeech opinion. A judge could exaggerate his or her prospeech position by actively authoring prospeech opinions, and be restricting involvement in antispeech decisions to the mere signing of opinions."[28]

Though Hale was writing about the Supreme Court, the same analysis can be applied to the Circuit Court. If Hale's analysis is true, then we would expect a noticeable increase from the expression agreement rate of a judge's participation (Table 1) to the agreement rate in opinions (Table 2) both for Republican and Democratic judges.

Five of the eight Reagan judges demonstrated an increase, while among the eight Democrats, five increased their agreement rate. The change was enough to make Bork and Silberman change their conservative images to a moderate ones. But Williams, Douglas Ginsburg and Scalia demonstrated more conservative images based on their opinions.

The five Democrats, Edwards, Ruth Bader Ginsburg, Wald, Wright and Bazelon, created a more liberal image based on their written opinions. Wright wrote twelve pro-expression opinions and no anti-expressions opinions for a 100 percent ranking. Edwards was not far behind with a 90.9 percent ranking writing 10 of 11 opinions favoring expression. On the other hand, Mikva and Tamm among the Democrats projected a more conservative image when they wrote expression opinions.

Reagan judges nearly uniformily agree with each other whether for or against expression when participating together (Table 3). Only in one case did Silberman and Starr disagree on the result.

However, when Reagan judges were matched with Democratic appointees, the agreement level falls considerably (Table 4). In only three instances did a Democrat agree 100 percent of the time with a Republican judge -- Tamm with Bork, Tamm with Scalia, and Wright with Buckley. Otherwise, the difference ranged from no agreement to 85.7 percent agreement. On the average, Robinson and Wald were the least likely to agree with their Republican counterparts scoring 42.5 and 48.2 percent agreement rates, respectively. Tamm, at 83.3 percent, was the most likely Democrat to agree with the Republicans.

CONCLUSIONS

By combining two measures of the judges' behavior -- level of support for freedom of expression and agreement in voting -- it was

possible to characterize the participation of Reagan court members in free speech cases. Sentelle, the newest member of the circuit court, is the only one of the eight Reagan appointees who could not be classified because he had not had an opportunity to write or chose not to write opinions dealing with expression issues. However, Sentelle had participated in four expression cases in which he displayed, at least initially, a moderate image.

It should not be surprising that the Reagan judges are predominantly conservative since the president left no doubt from the start of his first administration that he intended to cut the judiciary from his ideological cloth. He appears to have made good on his promise, at least in regard to expression issues.

However, it would be a mistake to use these findings to suggest that the Reagan judges will be conservative on all issues. The Circuit Court of Appeals for the District of Columbia handles a very wide variety of cases, of which expression cases are a small part. Those other cases cannot be ignored.

Citing statistics he compiled from the clerk's office of the D.C. Circuit, Judge Edwards, a Carter appointee, said "members of the D.C. Circuit rarely disagree over the disposition of cases."[29] He noted that more than 94 percent of the court's 1,146 cases between July 1, 1983 and June 30, 1984 were decided without a dissent.[30] Edwards contended that there is no ideological gulf dividing the judges on the D.C. Circuit.

However, the statistics from this study show that perhaps a gulf exists on expression issues and could very possibly exist in other issues. The findings do suggest that there are distinct lines between Republican and Democratic appointees. There are convincing

differences in the agreement rate between Reagan judges and judges appointed by previous administrations. Edwards does not discount that some decisions are made along political and ideological lines. "Judges are very likely to disagree in extremely difficult cases that implicate ultimate values."[31] But he contends that those disagreements are limited. He views "liberal" and "conservative" labels as terms "drawn from positions in the political marketplace, which provide an uncertain guide at best to the resolution of legal questions. Moreover, such labels obscure the distinctive aspects of a judge's personality, background, outlook and view of the judicial function, factors which may have far more to do with a judge's personal response to a case than the political views he or she expressed before going to the bench."[32]

Herman Schwartz, a law professor at American University, was quoted recently saying that Reagan has appointed "conservative judicial activists bent on narrow interpretations of statutes at the expense of individual rights."[33] Schwartz's comments are supported by this study which found that expression rights as a part of individual rights are being viewed more conservatively and narrowly by the Reagan judges appointed to the D.C. Circuit. This study also supports Schwartz's contention that Reagan did not need to curb a liberal bias in the judiciary since, at least with expression cases, the D.C. Circuit demonstrates a moderate image and not the liberal bias the Right would like the public to believe.

In their extensive study of the federal district courts, Carp and Rowland found that "the empirical data on the voting behavior of the various presidential appointees meshed very closely with the existing political-historical literature: appointees of Democratic

presidents were comparatively more liberal than those chosen by Republican chief executives."[34] Presidential impact is affected by a number of factors, Carp and Rowland said, including "the executive's desire to base appointments primarily on ideological criteria, the number of judges he is permitted to appoint, the degree to which he is able to marshal his political skills in support of his nominees, and the nature of the judicial climate into which the new appointees enter."[35]

The debate about the impact Reagan has had on the federal judiciary is likely to be a lively one for some time to come. This study relying on one methodology and one perspective is neither the first not the last word about the impact Reagan has had on the federal judiciary, where, long after his retirement to California, Reagan's ideological legacy will live on through the appointments he made.

TABLE 1. VOTING BEHAVIOR IN FREEDOM OF EXPRESSION CASES

Judge	Favor Expression*	N of Opportunities	Image Created By Participation**
Bork	38.7 (12)	31	Conservative
Starr	33.3 (8)	24	Conservative
Silberman	37.5 (6)	16	Conservative
Buckley	55.5 (5)	9	Moderate
Williams	12.5 (1)	8	Conservative
D. Ginsburg	37.5 (3)	8	Conservative
Scalia	36.4 (8)	22	Conservative
Sentelle	50.0 (2)	4	Moderate
TOTAL REAGAN JUDGES	36.8 (45)	122	Conservative
Mikva	37.1 (13)	35	Conservative
Edwards	59.0 (23)	39	Liberal
R.B. Ginsburg	60.0 (21)	35	Liberal
Wald	59.5 (22)	37	Liberal
Robinson	50.0 (14)	28	Moderate
Tamm	44.4 (4)	9	Moderate
Wright	70.0 (21)	30	Liberal
Bazelon	40.0 (2)	5	Conservative
TOTAL DEMOCRATIC APPOINTEES	55.0 (120)	218	Moderate
MacKinnon	22.2 (4)	18	Conservative
Wilkey	33.3 (4)	12	Conservative
TOTAL OTHER GOP APPOINTEES	26.7 (8)	30	Conservative
JUDGES BY DESIGNATION	41.3 (26)	63	Conservative

*Numbers represent percentages for those cases in which the judges participated.
Numbers in parentheses represent individual N of cases
**Liberal = More than 56%; Conservative = Less than 44%

TABLE 2: FREEDOM OF EXPRESSION OPINIONS

Judge	Majority Opinions	Concurring Opinions	Dissenting Opinions	Opinion Rate	Favor Expression	Oppose Expression	Percent Favor	Opinion Image*
Bork	8	2	6	51.6	7	7	50.0	Moderate
Starr	6	4	4	58.3	5	8	38.5	Conservativ
Silberman	8	1	0	56.3	4	5	44.4	Moderate
Buckley	4	0	1	55.6	2	2	50.0	Moderate
Williams	5	0	0	62.5	0	5	0	Conservativ
D Ginsburg	0	1	1	25.0	0	2	0	Conservativ
Scalia	8	0	0	36.4	2	6	25.0	Conservativ
Sentelle	0	0	0	0	0	0	NA	NA
Mikva	13	0	1	40.0	4	9	30.8	Conservativ
Edwards	9	2	1	30.8	10	1	90.9	Liberal
RB Ginsburg	7	2	2	31.4	9	2	81.8	Liberal
Wald	13	1	5	51.3	13	5	72.2	Liberal
Robinson	7	2	2	39.3	5	5	50.0	Moderate
Tamm	3	0	0	33.3	1	2	33.3	Conservativ
Wright	9	2	3	46.7	12	0	100	Liberal
Bazelon	2	0	0	40.0	1	1	50.0	Moderate
MacKinnon	4	2	1	38.9	1	6	14.3	Conservativ
Wilkey	4	0	1	41.7	1	4	20.0	Conservativ
Judges By Designation	17	1	1	30.2	9	10	47.4	Moderate

*Liberal = More than 56%; Conservative = Less than 44%

TABLE 3: AGREEMENT OF REAGAN JUDGES ON EXPRESSION CASES*

	Starr	Silberman	Buckley	Williams	Scalia	O.Ginsburg	Sentelle
Bork	100	100	100	100	100	100	100
	(7)	(1)	(2)	(2)	(6)	(1)	(1)
Starr		75	100	100	100	100	100
		(4)	(2)	(2)	(3)	(1)	(1)
Silberman	75		100	100	100	100	100
	(4)		(1)	(3)	(3)	(3)	(2)
Buckley	100	100		100		100	100
	(2)	(1)		(1)		(2)	(1)
Williams	100	100	100			100	100
	(2)	(3)	(1)			(1)	(1)
O.Ginsburg	100	100	100	100			100
	(1)	(3)	(2)	(1)			(2)
Scalia	100	100					
	(3)	(3)					
Sentelle	100	100	100	100		100	
	(1)	(2)	(1)	(1)		(2)	

*Numbers in parentheses are the N of cases

TABLE 4: AGREEMENT OF REAGAN APPOINTEES

WITH OTHER D.C. CIRCUIT JUDGES*

	Bork	Starr	Silberman	Buckley	Williams	Scalia	D.Ginsburg	Sentelle
Mikva	50	83.3	66.7	66.7	66.7	66.7	0	0
50**	(4)	(6)	(3)	(3)	(3)	(3)	(1)	(1)
Edwards	77	66.7	66.7	66.7	50	83.3	50	0
57.6	(13)	(6)	(3)	(3)	(2)	(6)	(4)	(1)
RBGinsburg	50	66.7	66.7	80	50	80	66.7	50
63.8	(6)	(3)	(3)	(5)	(2)	(5)	(3)	(2)
Wald	43	85.7	66.7	0	50	40	50	50
48.2	(7)	(7)	(3)	(1)	(2)	(5)	(2)	(2)
Robinson	40	83.3	33.3	50	0	50	33.7	50
42.5	(5)	(6)	(3)	(2)	(2)	(2)	(3)	(2)
Wright	62.5	75	75	100		71.4		
76.8	(8)	(4)	(4)	(1)		(7)		
Tamm	100	50				100		
83.3	(3)	2				(1)		
MacKinnon	100	50				80		
76.7	(4)	(2)				(5)		
Wilkey	100	100				100		
100	(3)	(1)				(4)		

*Numbers in parentheses are the N of cases.

**Figure indicates judge's overall agreement rate with Reagan judge

ENDNOTES

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